

KANSAS

BILL GRAVES
GOVERNOR



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OFFICE OF THE STATE BANK COMMISSIONER

SPECIAL ORDER 1995-5

THIS ORDER, is hereby issued this 6th day of September, 1995 by the Kansas State Bank Commissioner (commissioner) pursuant to K.S.A. 9-1715, as amended.

PART I

WHEREAS, pursuant to 12 U.S.C. § 30, as applied in the February 16, 1995 DECISION OF THE COMPTROLLER OF THE CURRENCY ON THE APPLICATIONS OF BANK MIDWEST OF KANSAS, NATIONAL ASSOCIATION, LENEXA, KANSAS, AND BANK MIDWEST, NATIONAL ASSOCIATION, KANSAS CITY, MISSOURI (OCC Decision) a national banking association may move its main office location up to thirty miles from the city limits of the city in which it is currently located; and,

WHEREAS, pursuant to 12 U.S.C. § 30, as applied in the OCC Decision, a national banking association may move its main office from one state to another. For purposes of this order, the state from which a bank moves its main office shall be known as the "host state"; the state into which the bank moves its main office shall be known as the "home state"; and,

WHEREAS, pursuant to 12 U.S.C. § 30, as applied in the OCC Decision, the national banking association, subsequent to the relocation of its main office to the home state, has the authority to retain its host state locations for operation as interstate branches; and,

WHEREAS, pursuant to 12 U.S.C. § 36, as applied in the OCC Decision, the national banking association, subsequent to the relocation of its main office to the home state, has the authority to seek and acquire OCC approval to establish branches at additional host state locations; and,

WHEREAS, pursuant to 12 U.S.C. § 215a and 12 U.S.C. § 36, as applied in the OCC Decision, a national banking association in a home state may effectuate a merger with a national banking association that has regulatory approval to relocate to the home state from a host state, and subsequent to the merger, the surviving national banking association located in the home state has the authority to retain the host state locations for operation as interstate branches; and,

WHEREAS, no provision of Kansas law presently allows the relocation of any state bank from a host state to a location within a home state; and,

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WHEREAS, no provision of Kansas law presently allows a state bank which has relocated its home state to Kansas, or a Kansas state bank that has relocated its home state to Missouri, to operate or establish branches in the host states; and,

WHEREAS, no provision of Kansas law, including K.S.A. 9-1724 which authorizes the merger of Kansas state banks, allows a Kansas state bank to merge with a Missouri state bank that has received regulatory approval to relocate to Kansas; and,

WHEREAS, K.S.A. 9-1715, as amended, grants to the commissioner "...the power to authorize any or all state banks to engage in any activity in which such banks could engage were they operating as national banks at the time such authority is granted..."; and,

WHEREAS, a number of state banks have articulated a desire to convert from a state bank charter to a national banking association charter in order to access the authority presented by 12 U.S.C. § 30, 12 U.S.C. § 36, and 12 U.S.C. § 215a, as applied in the OCC decision; and,

WHEREAS, the commissioner deems the issuance of this special order to be reasonably required to preserve the welfare of state banks and to promote competitive equality between state banks and national banking associations, and is therefore required by statute to issue this special order;

PART II

IT IS THEREFORE ORDERED, that upon the affirmative vote of not less than two-thirds of a Kansas state bank's outstanding voting stock, and with the prior approval of the commissioner, a Kansas state bank may relocate its main office not more than 30 miles from the city limits of the city in which it is located to any location within the state of Missouri.

IT IS FURTHER ORDERED, that no such approval shall be granted, pursuant to this Part, before the Kansas state bank has filed an application on a form and containing such information as required by the commissioner.

IT IS FURTHER ORDERED, that no such approval shall be granted, pursuant to this Part, before the commissioner has received written notice from the Missouri Commissioner of Finance certifying that the Kansas state bank has applied for and received approval from the state of Missouri to relocate its main office pursuant to the laws and regulations of the state of Missouri.

IT IS FURTHER ORDERED, that a Kansas state bank which receives approval from the Missouri Commissioner of Finance shall, not more than 15 days following such relocation, provide the commissioner with the bank's Kansas certificate of authority or charter, and written certification that notice of the relocation has been filed with the Corporations Division of the Kansas Secretary of State.

IT IS FURTHER ORDERED, that upon receiving the prior approval of the commissioner, pursuant to this Part, and subsequent to the bank's relocation of its main office to a location in the state of Missouri, the bank shall have the authority to operate the bank's Kansas locations, which existed at the time of the approval of the relocation, as branches.

IT IS FURTHER ORDERED, that a Kansas state bank which relocates its main office to Missouri and retains its Kansas locations as branches, pursuant to the authority provided by this Part, shall have the authority to establish additional Kansas branch locations, pursuant to the authority and in accordance with the procedures established by K.S.A. 9-1111, as amended, to the same extent as a state bank with its main office in Kansas, provided the bank seeks and acquires the prior approval of the Missouri Commissioner of Finance.

IT IS FURTHER ORDERED, that the commissioner shall retain the authority to examine the resulting Missouri bank and its Kansas branches for the purpose of determining the safety and soundness of their operation and compliance with applicable laws and regulations, to levy any assessments and/or fees associated with the supervision as determined by the commissioner, and to exchange examination reports and other regulatory information with the state of Missouri.

IT IS FURTHER ORDERED, that a Kansas state bank which relocates its main office to Missouri and retains its Kansas locations as branches, pursuant to the authority provided by this Part, shall be subject to the provisions of K.S.A. 9-1701, K.S.A. 9-1703, K.S.A. 9-1708, K.S.A. 9-1714, K.S.A. 9-1805, and K.S.A. 9-1807, to the same extent as a state bank with its main office in Kansas.

PART III

IT IS FURTHER ORDERED, that with the prior approval of the commissioner, a Missouri state bank may relocate its main office not more than 30 miles from the city limits of the city in which it is located to any location within the state of Kansas.

IT IS FURTHER ORDERED, that no such approval shall be granted, pursuant to this Part, before the Missouri state bank has filed an application with the commissioner. This application shall be on a form prescribed by the commissioner and shall include the following items:

- (A) A certified copy of the Missouri state bank's articles of agreement;
- (B) A transcript of the minutes of the stockholder's meeting of the Missouri state bank, showing that at least a majority of the outstanding voting stock of the Missouri state bank was voted in favor of the relocation and conversion to a Kansas state bank;
- (C) Articles of incorporation duly made and executed in accordance with the Kansas general corporation code; and which shall also specifically include the names and addresses of its stockholders and the amount of stock owned by each; and which shall also specifically provide that the proposed resulting Kansas state bank is and shall be considered the same as, and a continuation of, the business and corporate entity of the converting Missouri state bank, and that with regard to powers, duties, and rights the resulting bank is a corporation formed under the laws of Kansas.
- (D) The proposed name of the resulting Kansas state bank.
- (E) The names and addresses of all persons who are to be officers and directors of the resulting Kansas state bank.
- (F) Any and all additional information the commissioner deems necessary to make a determination regarding the legality of the proposed relocation or resulting Kansas state bank.

IT IS FURTHER ORDERED, that the resulting Kansas state bank shall have the authority to issue and exchange its shares of stock for the shares of the Missouri state bank.

IT IS FURTHER ORDERED, that no such approval shall be granted, pursuant to this Part, before the commissioner has conducted an investigation of the Missouri state bank, to the extent the commissioner deems necessary, to determine that the assets of the Missouri state bank are properly valued, that the capital stock of the resulting Kansas state bank will be unimpaired, that the proposed stockholders, directors, and officers are of sufficient character and experience, and that approval of the application will result in a Kansas state bank which is in compliance with the provisions of this order and applicable Kansas law.

IT IS FURTHER ORDERED, that upon approval by the commissioner of the relocation of a Missouri state bank to Kansas, pursuant to this Part, and after the Missouri state bank has supplied the commissioner written certification that its articles of incorporation, and the other items contained in the application required by this Part, have been duly filed with the Corporations Division of the Kansas Secretary of State, the commissioner shall issue the bank a certificate of authority showing that such bank is authorized to transact a general banking business in Kansas and that, pursuant to the provisions of the Kansas banking code and other applicable laws of Kansas, the resulting bank is afforded the same rights, powers and franchises and is subject to the same restrictions, duties and obligations as any state bank incorporated in Kansas.

IT IS FURTHER ORDERED, that upon receiving the prior approval of the commissioner, pursuant to this Part, and subsequent to the bank's relocation and acquisition of a Kansas certificate of authority, the resulting Kansas state bank shall have the authority to operate the bank's Missouri locations, which existed at the time of the approval of the relocation, as branches.

IT IS FURTHER ORDERED, that the resulting Kansas state bank which relocates and retains its Missouri locations as branches, pursuant to the authority provided by this Part, shall have the authority to establish additional Missouri branch locations, pursuant to the authority and in accordance with the procedures established by K.S.A. 9-1111, as amended, provided the bank seeks and acquires the prior approval of the Missouri Commissioner of Finance.

PART IV

IT IS FURTHER ORDERED, that notwithstanding the requirements of Part III of this Order, with the prior approval of the commissioner, a Kansas state bank with its main office not more than 30 miles from the city limits of the city in which the home office of a particular constituent Missouri state bank is located, may merge with the particular constituent Missouri state bank; *provided*, the particular constituent Missouri state bank has applied for and received approval from the Missouri Commissioner of Finance to relocate its main office to Kansas pursuant to the laws and regulations of the state of Missouri.

IT IS FURTHER ORDERED, that no such approval shall be granted, pursuant to this Part, before the commissioner has received written notice from the Missouri Commissioner of Finance certifying that the Missouri state bank has applied for and received approval from the state of Missouri to relocate its main office to Kansas pursuant to the laws and regulations of the state of Missouri.

IT IS FURTHER ORDERED, that no such approval shall be granted, pursuant to this Part, before the Kansas state bank has fully complied with K.S.A. 9-1724 and the Kansas general corporation code, including, without limitation, the filing of an application on a form required by the commissioner and by satisfactorily meeting all substantive and procedural requirements which relate to the merger of a Kansas state bank.

IT IS FURTHER ORDERED, that upon receiving the prior approval of the commissioner, pursuant to this Part, and subsequent to the merger, the Kansas state bank which survives the merger with a Missouri state bank, shall have the authority to operate the Missouri state bank's Missouri locations, which existed at the time of the approval of the merger, as branches.

IT IS FURTHER ORDERED, that the resulting Kansas state bank which merges with a Missouri state bank and retains its Missouri locations as branches, pursuant to the authority provided by this Part, shall have the authority to establish additional Missouri branch locations, pursuant to the authority and in accordance with the procedures established by K.S.A. 9-1111, as amended, provided the bank seeks and acquires the prior approval of the Missouri Commissioner of Finance.

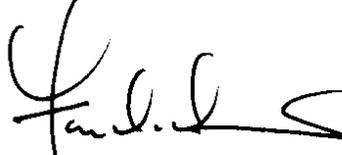
PART V

IT IS FURTHER ORDERED, that any bank which relocates from a host state to a home state, or which survives a merger, pursuant to the authority provided by this Order, shall succeed by operation of law, without any conveyance or transfer, to all the actual or potential assets, real property, tangible personal property, intangible personal property, rights, franchises, and interests; and shall by operation of law continue all trust functions being exercised by the relocated bank or the merged bank, and shall be substituted for the relocated bank or the merged bank and shall hold and enjoy the same and all rights of property and interests of a fiduciary nature including, without limitation, as trustee, agent, executor, administrator, registrar, conservator, assignee, receiver, custodian, transfer agent, corporate trustee, corporate agent, or any other fiduciary capacity in the same manner and to the same extent as these rights and interests were held by the relocated or merged bank at the time of its relocation or merger. In the case of a merger, this section is intended to be in addition to and not in exclusion of any powers, rights, duties or liabilities established on behalf of any party by K.S.A. 17-6709.

IT IS FURTHER ORDERED, pursuant to K.S.A. 9-1715(b), as amended, that the terms of this special order shall become effective Sept 6th, 1995 and shall remain in full force and effect until amended or revoked by the Kansas State Bank Commissioner.

IT IS SO ORDERED.

KANSAS STATE BANK COMMISSIONER



Frank D. Dunnick